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## Department of Toxic Substances Control

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Arnold Schwarzenegger  
Governor

April 14, 2005

To All Interested Parties:

The Department of Toxic Substances Control (DTSC) will hold a workshop to solicit input on the development of regulations for the following topic:

### **Permit by Rule Regulations for Authorizing the Office of the State Fire Marshal to Treat Seized Fireworks in a Mobile Fireworks Treatment Trailer**

The workshop will be held at the following time and place:

Date: May 19, 2005  
Time: 9:00 AM – 11:00 AM  
  
Location: CalEPA Building  
Conference Room 210, 2<sup>nd</sup> Floor  
1001 "I" Street  
Sacramento, California 95814

Note: Visitors must check in with security upon entering the CalEPA building.

A DTSC representative will summarize the proposed regulatory action, discuss alternatives considered, and broach the rationale used to develop the proposal. After the short presentation, DTSC will solicit comments and suggestions from attendees. Below is a brief background of the proposal:

The State Fire Marshal (OSFM) is mandated to manage and dispose illegal fireworks seized by local emergency response and law enforcement agencies. Authorization from DTSC is required for planned hazardous waste treatment activities. The existing means of authorization, site and event-specific emergency permits, is not an effective means of regulating the recurring treatment events that must be conducted by the OSFM. The proposed regulations would authorize the OSFM to treat and destroy seized Department of Transportation (DOT) Hazard Division 1.4 (moderate fire with no blast or fragments) illegal consumer fireworks in an enclosed mobile treatment unit. The management of these items in a mobile treatment unit will be a new treatment technology that will improve the OSFM's ability to protect human health and the environment. DOT Division 1.4 fireworks are regulated as hazardous wastes in California, but not under the federal Resource Conservation and Recovery Act (RCRA). Division 1.4 fireworks comprise over 90% of the fireworks seized under the OSFM's authority.

The OSFM has an opportunity to acquire one or more enclosed, mobile units that would be designed and used exclusively for the treatment of seized illegal fireworks. The unit(s) would be taken to the various locations throughout the state where the seized fireworks are being held. The unit(s) would be operated by the OSFM's certified bomb technicians.

DTSC has prepared a "strawman" text of the draft regulations, for discussion purposes only, which reflects our current proposals. This text is attached, below. All interested parties are encouraged to review the text and to provide comments. Proposed language will be developed after DTSC has considered all the input received in the workshop. A draft of the notification form described in the regulations is available on the DTSC website, or from DTSC staff. For more information on the proposal for the PBR regulations for treatment of seized fireworks by the OSFM, please contact Jan Smith at (916) 324-0705 or via email at [jsmith1@dtsc.ca.gov](mailto:jsmith1@dtsc.ca.gov).

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**DRAFT: PERMIT BY RULE REGULATIONS FOR AUTHORIZING THE OFFICE OF THE  
STATE FIRE MARSHAL TO TREAT SEIZED FIREWORKS IN A MOBILE FIREWORKS  
TREATMENT UNIT**

**PROPOSED TEXT**

**§ 67450.31. Scope and Purpose.**

- (a) Scope. This article applies only to management of fireworks seized, confiscated or relinquished by or to a local, state or federal government law enforcement or emergency response agency, when the fireworks are treated in a unit owned and operated by the California Office of the State Fire Marshal (OSFM). This specialized type of permit by rule provides hazardous waste treatment authorization if the activities meet all of the following criteria:
- (1) The treatment is conducted by the OSFM or its designee;
  - (2) The treatment activities conducted pursuant to this article are limited to treatment of fireworks classified by the federal Department of Transportation as hazard Class 1.4 (explosives with no significant blast hazard);
  - (3) The treatment is conducted in a Mobile Fireworks Treatment Unit (MFTU), that meets the applicable criteria specified in section 67450.33(a), and that is owned and operated by the OSFM. An MFTU means a unit that meets and is operated in accordance with the criteria specified in sections 67450.31 and 67450.33 of this chapter.
- (b) The requirements of this section do not apply to any fireworks management activities undertaken by the OSFM or its designee, if those activities are an immediate response exempt from the requirement for a permit pursuant to Cal. Code Regs., tit. 22, sections 66264.1(g)(8)(A), 66265.1(d)(11)(A) or 66270.1(c)(3)(A).

**§ 67450.32. Notification Requirements.**

- (a) The OSFM shall be deemed to have a permit by rule for a MFTU for the treatment of fireworks when the OSFM complies with subsections (b), (c), (d), (e) and (f) of this section, as applicable, and receives an acknowledgment from the Department authorizing operation of the MFTU as required by subsection (c) or (e).
- (b) The OSFM shall submit to the Department, in person or by certified mail with return receipt requested, a notification of intent to operate a MFTU. The notification shall consist of a completed Fireworks Treatment Permit by Rule Notification Form (DTSC Form XXXX).
- (c) Within thirty (30) calendar days of receipt of a notification submitted pursuant to subsection (b) of this section, the Department shall acknowledge, in writing, receipt of the notification. The Department may, in conjunction with the acknowledgment, authorize operation of the MFTU subject to the requirements and conditions of this article; deny authorization to operate under a permit by rule; or notify the OSFM that the notification is incomplete or inaccurate and inform the OSFM that additional information or correction(s) is needed. The Department may deny the notification if the OSFM fails to provide the information or correction(s) requested within ten (10) calendar days of receipt of the acknowledgment. Upon good cause shown by OSFM, the Department may grant the OSFM additional time to provide the information or correction(s) requested. If a notification is rejected, the OSFM may submit a new or revised notification.
- (d) Notwithstanding section 67450.3(c)(1), and except as otherwise specified by the Department, the OSFM shall be deemed to have a permit by rule for a MFTU in effect for five (5) years from the date of authorization, as long as the MFTU is operated in compliance with the requirements of this article, and the permit by rule is not amended, revised, revoked, voided or suspended.
- (e) The OSFM may not implement any changes to the MFTU or operation of the MFTU without prior written acknowledgement from the Department. Prior to implementing any change in the operation of the MFTU as described in the notification required by subsection (b) of this section, the OSFM shall send a revised notification to the Department. If a revised notification is rejected, the OSFM may continue to operate the MFTU under the conditions of the previous authorization until authorization is received to operate under a revised notification.
- (f) The OSFM shall remain in compliance with the requirements specified in this article between the time the MFTU commences operation and the time the applicable facility closure requirements for MFTUs are met.

**§ 67450.33. Operating Requirements Applicable to a MFTU Deemed to Have a Permit by Rule.**

- (a) Under permit by rule, treatment of waste fireworks shall take place only in a MFTU that meets the following specifications:

  - (1) The MFTU is enclosed, to prevent discharge of debris and to minimize releases;
  - (2) The air emissions of the MFTU meet the applicable requirements of each of the air quality management districts or air pollution control districts in which it will operate, or the MFTU includes or can be connected with an air pollution control component or device that will allow the unit to operate in accordance with the applicable requirements of each of the air quality management districts or air pollution control districts in which it will operate;

(3) The OSFM maintains the MFTU, with regular inspections, and repairs or replaces any part(s) of the unit, as necessary to maintain the integrity of the unit and safety of the personnel operating the unit; and

(4) The OSFM stores the MFTU, when not in use, in a location secure from access by the public.

(b) The OSFM's operation of a MFTU deemed to have a permit by rule shall maintain compliance with the following applicable portions of the following regulations in chapter 15 of this division:

(1) Section 66265.11, Identification Number;

(2) Section 66265.14, Security, while the MFTU is located at a location where it will conduct treatment of fireworks;

(3) Section 66265.15, General Inspection Requirements;

(4) Section 66265.16, Personnel Training, and all applicable training specified by the OSFM as a requirement for a Certified Bomb Technician, and any other training determined to be necessary for safe and effective operation of a MFTU;

(5) Section 66265.17, General Requirements for Ignitable, Reactive or Incompatible Wastes;

(6) Section 66265.51, Purpose and Implementation of Contingency Plan;

(7) Section 66265.52, Content of Contingency Plan;

(8) Section 66265.53(b), Copies of Contingency Plan. At least one copy of this plan shall be kept with the MFTU, and available for immediate reference throughout the course of any treatment event;

(9) Section 66265.55, Emergency Coordinator;

(10) Section 66265.56, Emergency Procedures. At least one copy of this plan shall be kept with the MFTU, and available for immediate reference throughout the course of any treatment event;

(11) Section 66265.73(a), (b)(1), (b)(4), and (b)(5), Operating Record. At least one copy of this record shall be kept with the MFTU, and available for immediate reference throughout the course of any treatment event;

(c) A MFTU shall be operated in accordance with the applicable requirements determined by each local air pollution control district or air quality management district for each location in which the MFTU is operated. These requirements may include notifications or permits, and may vary from district to district. Documentation of compliance with these requirements shall be maintained as part of the operating record for each MFTU.

(d) For each location in which treatment is conducted in a MFTU, the unit shall be operated at least fifty (50) feet from the closest property line.

#### **67450.34. Recordkeeping Requirements.**

- (a) The OSFM deemed to have a permit by rule for a MFTU shall maintain an operating record. The operating record shall be labeled with the identification number for the MFTU that it represents. The operating record shall consist of the following documents:
- (1) Identification of each local, state or federal law enforcement or emergency response agency for which the OSFM treats seized fireworks;
  - (2) The address or location description of each specific location where the treatment was conducted;
  - (3) The date or dates when treatment was conducted at each location;
  - (4) The estimated total quantity of fireworks, in pounds, treated each time, at each location;
  - (5) The quantity and disposition of any residuals remaining in the MFTU when the treatment is completed;
  - (6) Documents necessary to demonstrate that the MFTU was operated in compliance with the requirements of the applicable air pollution control district or air quality management district;
  - (7) A description of any problems or significant issues that arose during the treatment of the fireworks, and a brief explanation of how the problems were resolved.
  - (8) A record of the dates and results of each inspection of the MFTU, and a brief description of any repairs or changes made to maintain the MFTU; and
  - (9) A record documenting successful completion of all applicable training received by each OSFM employee, or other persons approved by the OSFM to operate the MFTU.
- (b) The OSFM shall keep all records required by this section for a minimum period of three years. The record retention period is automatically extended during the course of any unresolved enforcement action regarding the regulated activity or as requested by the Department.

#### **67450.35. Transportation Requirements.**

- (a) If fireworks that have been determined to be hazardous wastes must be transported offsite from the location where the determination is made that the items are to be treated in a MFTU, to the location where the treatment will take place, the transportation of these items shall be conducted in accordance with all applicable requirements of Calif. Code of Regs., tit. 22, ch. 12.
- (b) If the OSFM determines that the residuals remaining in the MFTU following treatment are hazardous wastes pursuant to Calif. Code of Regs, tit. 22, chapter 11, the residuals shall be managed in accordance with all applicable requirements of Calif. Code of Regs, tit. 22, ch. 12. No fireworks or fireworks treatment residuals that are hazardous wastes shall be transported in the MFTU.

#### **67450.36. MFTU Closure.**

- (a) The OSFM shall, within six months after authorization under PBR, prepare a written closure plan that identifies the steps necessary to perform closure at the end of the active life of the MFTU. The OSFM shall amend the closure plan whenever changes in the MFTU operating record or MFTU design or operation affect the closure plan.
- (b) When it is determined that a MFTU will no longer be used, the OSFM shall close the MFTU in a manner to ensure that:
  - (1) All fireworks and hazardous waste residuals are removed from the unit, and are managed in accordance with applicable requirements; and
  - (2) All contaminated equipment is decontaminated or is properly disposed of, in accordance with all applicable requirements.
- (c) The OSFM shall complete closure activities in accordance with the closure plan within 180 days after it is determined that a MFTU will no longer be used.
- (d) The OSFM shall notify the Department at least fifteen (15) days prior to completion of closure of a MFTU.
- (e) The OSFM shall remain in compliance with all applicable requirements of this article until the OSFM submits to the Department a certification signed by the OSFM and by a professional engineer registered in California, that closure has been completed in accordance with the closure plan and that the closure plan meets the applicable requirements of this article. The certification shall be submitted to the Department within 60 days of final closure of the MFTU. The required professional engineer certification shall be provided by an independent, registered professional engineer, or a registered professional engineer employed by a government entity not reporting to the OSFM.

**67450.37. Revocation, Suspension and Denial of Authorization or Reauthorization, and Operating Restrictions for MFTUs Operating Under Permit by Rule.**

- (a) Notwithstanding the provisions of Chapter 21 of this division, the Department may revoke or suspend authorization or reauthorization for any MFTU operating or proposing to operate under a permit by rule as provided in this section. The Department may also deny authorization or reauthorization for a MFTU operating or proposing to operate under a permit by rule as provided in this section. The Department shall base a decision on any one of the factors set forth in section 66270.43(a) or (b) or on Health and Safety Code section 25186 or on a finding that operation of the MFTU in question will endanger human health, domestic livestock, wildlife, or the environment.
  - (1) Notice of revocation, suspension, or denial shall be provided to the OSFM by certified mail with return receipt requested or by personal service.
  - (2) If the OSFM's authorization for a MFTU under a permit by rule is revoked or suspended or is denied authorization or reauthorization, and the OSFM wishes to appeal the revocation, suspension, or denial, the OSFM shall appeal by submitting a letter requesting a hearing within ten (10) days of receipt of notice of revocation, suspension, or denial.
  - (3) All appeal proceedings shall be conducted in accordance with Chapter 5 (commencing with section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (b) Any authorization or reauthorization to operate a MFTU granted pursuant to this article is contingent upon the accuracy of information contained in the notifications required by sections 67450.33(b) and (c). Any misrepresentation or any failure to fully disclose all relevant facts shall render the authorization or reauthorization to operate null and void.